

**A RESOLUTION BY
TRANSPORTATION COMMITTEE**

A RESOLUTION TO AMEND RESOLUTION 08-R-0987, ADOPTED BY THE CITY COUNCIL ON MAY 19, 2008, AND APPROVED BY THE MAYOR ON MAY 27, 2008, TO CORRECTLY IDENTIFY THE EXECUTING ORGANIZATION FOR THE ATLANTA SYMPHONY CENTER TRANSPORTATION ENHANCEMENT PROJECT MEMORANDUM OF UNDERSTANDING; AND FOR OTHER PURPOSES.

WHEREAS, Resolution 08-R-0987 (attached hereto as Exhibit "A") was introduced before the Atlanta City Council on May 19, 2008; and

WHEREAS, Resolution 08-R-0987 was adopted by the Atlanta City Council on May 19, 2008 and approved by the Mayor on May 27, 2008; and

WHEREAS, the transportation enhancement project is now being managed by the Woodruff Arts Center, Inc., parent company of the Atlanta Symphony Orchestra; and

WHEREAS, due to the change in management, it is now necessary to amend Resolution 08-R-0987 to properly authorize the City of Atlanta to enter into a Memorandum of Understanding with The Woodruff Arts Center, Inc., to serve as the sponsor for the Atlanta Symphony Orchestra's Transportation Enhancement Project, P.I. No. 0008134.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES THAT, Resolution 08-R-0987 is hereby amended to correctly name the entity authorized to sponsor the Atlanta Symphony Orchestra's Transportation Enhancement Project, P.I. No. 0008134, from the Atlanta Symphony Orchestra to the legal name of its parent company, the Robert W. Woodruff Arts Center, Inc.

BE IT FINALLY RESOLVED, that the City Attorney be and hereby directed to negotiate, prepare, review, and present to the mayor for execution, the agreement necessary to effect the intent of this resolution.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Transportation Committee

Caption: A RESOLUTION TO AMEND RESOLUTION 08-R-0987, ADOPTED BY THE CITY COUNCIL ON MAY 19, 2008, AND APPROVED BY THE MAYOR ON MAY 27, 2008, TO CORRECTLY IDENTIFY THE EXECUTING ORGANIZATION FOR THE ATLANTA SYMPHONY CENTER TRANSPORTATION ENHANCEMENT PROJECT MEMORANDUM OF UNDERSTANDING; AND FOR OTHER PURPOSES.

Council Meeting Date: June 15, 2009

Requesting Dept.: Department of Public Works

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of corrective legislation is to correct the name of the executing organization for the Atlanta Symphony Center Transportation Enhancement Project Memorandum of Understanding from the Atlanta Symphony Orchestra to its parent organization, the Woodruff Arts Center.

2. Please provide background information regarding this legislation.

The Woodruff Arts Center and the Atlanta Symphony Orchestra have applied for and received approval for a 4100K in Federal Transportation Enhancement Funds for the new Atlanta Symphony Center. The City will enter into agreements with the State of Georgia, Department of Transportation for project management, design activities, construction, and the acquisition of right of way for the Atlanta Symphony Center on behalf of the Woodruff Arts Center and the ASO. The Woodruff Arts Center and the ASO will provide funding to or on behalf of the City in an amount equal to the local government match required of the City in order to allow the City to utilize the funding presently programmed to the Project.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** Interagency Agreement

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract:**

4. Fund Account Center:

5. Source of Funds: Quality of Life Bond Funds

6. Fiscal Impact: \$0

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By:

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Soraya Belgrave

Contact Number: (404) 330-6008

Originating Department: Department of Public Works

Committee(s) of Purview: Transportation Committee

Chief of Staff Deadline: May 26, 2009

Anticipated Committee Meeting Date(s): June 10, 2009

Anticipated Full Council Date: June 15, 2009

Legislative Counsel's Signature: Stefanie D. Grant

Commissioner Signature: _____

Chief Procurement Officer Signature: _____

CAPTION

A RESOLUTION TO AMEND RESOLUTION 08-R-0987, ADOPTED BY THE CITY COUNCIL ON MAY 19, 2008, AND APPROVED BY THE MAYOR ON MAY 27, 2008, TO CORRECTLY IDENTIFY THE EXECUTING ORGANIZATION FOR THE ATLANTA SYMPHONY CENTER TRANSPORTATION ENHANCEMENT PROJECT MEMORANDUM OF UNDERSTANDING; AND FOR OTHER PURPOSES.

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) 5/26/09 (date)

Received by Mayor's Office: _____ Reviewed by: _____
(date) (date)

Submitted to Council: _____



**RESOLUTION BY
TRANSPORTATION COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA ("CITY"), TO ENTER INTO A MEMORANDUM OF UNDERSTANDING ("MOU"), WITH THE ATLANTA SYMPHONY ORCHESTRA, INC. ("ASO"), TO SERVE AS THE SPONSOR FOR THE ASO'S TRANSPORTATION ENHANCEMENT PROJECT, P.I. NO. 0008134; AND FOR OTHER PURPOSES.

WHEREAS, the Atlanta Symphony Orchestra, Inc., ("ASO") is building a new facility, featuring a concert hall, studio hall, learning center, greenspace, streetscape and public amenities; and

WHEREAS, the new ASO center will require extensive transportation enhancements to improve pedestrian and transit facilities; and

WHEREAS, the ASO has applied for and received \$100,000.00 in federal transportation grant funds for transportation enhancements; and

WHEREAS, the City of Atlanta ("City") desires to enter into a Memorandum of Understanding, attached hereto in substantial form as Exhibit "A", with the ASO to serve as the sponsor or pass through agency for ASO's transportation enhancement project; and

WHEREAS, ASO will provide the preliminary engineering design activities, and construction and acquisition of right of way (contract for the acquisition of right of way) of certain improvements for the ASO; and

WHEREAS, the City will be required to provide approximately 41% in local government matching funds to the Georgia Department of Transportation ("GDOT") in order to allow the City to utilize the funds programmed to the transportation enhancement project; and

WHEREAS, the ASO will fund the City's local government match in an amount equal to the 41%.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES that the Mayor be and is hereby authorized, on behalf of the City of Atlanta to enter into a Memorandum of Understanding with the Atlanta Symphony Orchestra, Inc. ("ASO") to serve as the sponsor for the ASO's transportation enhancement project, attached hereto in substantial form as Exhibit "A".

BE IT FINALLY RESOLVED, that the City Attorney be and hereby directed to negotiate, prepare, review, and present to the Mayor for execution, the agreement necessary to effect the intent of this resolution.

A true copy,


Deputy Clerk

ADOPTED as amended by the Council
APPROVED by the Mayor

MAY 19, 2008
MAY 27, 2008

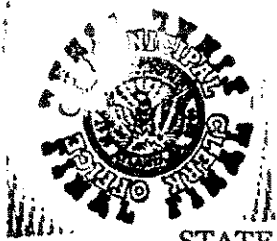


EXHIBIT "A"

STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT made and entered into this _____ day of _____, 2008 by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia, and ATLANTA SYMPHONY ORCHESTRA, INC., a Georgia Non-Profit Corporation ("ASO").

WITNESSETH

WHEREAS, the City of Atlanta desires to obtain the maximum benefit from funding made available under the region's Regional Transportation Plan ("RTP"), the Transportation Improvement Program ("TIP") and/or the State Transportation Improvement Program ("STIP"); and

WHEREAS, a specific program has been identified by the Georgia Department of Transportation as, P.I. #0008134 Atlanta Symphony Center; and

WHEREAS, P.I. #0008134 Atlanta Symphony Center is approved as eligible for federal and state funds if the City can provide approximately 41 % in local government matching funds to the Georgia Department of Transportation; and

WHEREAS, the City will enter into a Memorandum of Understanding with the State of Georgia, Department of Transportation ("GDOT") for project management, preliminary engineering (design) activities, and construction of certain improvements referred to as Atlanta Symphony Center Project identified in Exhibit "B" attached hereto and made a part hereof, hereinafter referred to collectively as the "Project"; and

WHEREAS, the City and ASO have represented to GDOT a desire to participate in certain activities of the Project as set forth in this Agreement and as set forth in the Transportation Enhancement Memorandum of Understanding ("TE MOU") identified in Exhibit "B" attached hereto; and

WHEREAS, GDOT has expressed a willingness to participate in certain activities of the Project as set forth in the TE MOU; and

WHEREAS, the ASO has or is willing, under the terms set forth in this agreement, to provide funding to or on behalf of the City in an amount equal to the 41% local government match required of the City in order to allow the City to utilize the funding presently programmed to the Project; and

WHEREAS, the City wishes, under the terms set forth herein, to accept the grant in an amount equal to the 41% local government match from ASO to fund the City's



commitment under the TE MOU with the Georgia Department of Transportation in order to allow the City to utilize the funds programmed to the Project at present or in the future.

WHEREAS, the City of Atlanta and ASO believe that a public partnership to complete the project set forth in this Agreement offers unique opportunities to significantly improve mobility in the Atlanta Symphony Center area; and

WHEREAS, the City desires the continued involvement of ASO in the development in the area comprising the Project and ASO desires to work with the City to supervise certain design, engineering and construction work associated with the Project; and

WHEREAS, Resolution, _____ adopted by the City Council on _____, 2008 and approved by the Mayor on _____, 2008 and made a part hereof by reference, authorized the Mayor to enter into this agreement with ASO under the terms specified herein; and

NOW THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter, and for other good and valuable consideration, the parties hereto do agree as follows:

1.

STATEMENT OF AGREEMENT

The City of Atlanta and ASO hereby agree that, as a condition for funding the City's local match, ASO will be responsible for and will perform the obligations which the City has agreed to perform pursuant to the TE MOU which is attached as Exhibit A. ASO may act as the City's agent and enter into agreements with a project manager, engineer and one or more professional or technical consultants and one or more general contractors or subcontractors (hereinafter "Persons") to perform the obligations set forth in the TE MOU, so long as the process used to enter into such agreements and the terms of such agreements are consistent with and permitted by the TE MOU and/or other applicable law. This Agreement does not assign, sublet or transfer any or all of the City's interest in the TE MOU.

2.

THE EFFECT OF THE TRANSPORTATION ENHANCEMENT MEMORANDUM OF UNDERSTANDING

ASO stipulates that it is aware of and has fully reviewed the TE MOU entered into between the City and GDOT and attached as Exhibit A. In any case where the terms of this Agreement may be interpreted or construed to require a lesser obligation of ASO to the City than the obligations of the City to GDOT, as set forth in the TE MOU, the terms of the TE MOU shall be considered as further clarifying and explaining the obligations



SO in this Agreement unless it is specially stated that such variation in obligations is permitted. ASO agrees that, to the extent possible, the obligations of ASO to perform under this Agreement should be construed to be equal to the obligations of the City to perform under the TE MOU.

- a. Under no circumstances shall the City be obligated to supply any funds to complete any portion of the work or satisfy any claims of ASO or any other Person or Persons after termination of the TE MOU by GDOT.
- b. Should GDOT terminate the TE MOU prior to the completion of the work, ASO agrees that any of the streets or sidewalks, which are uncompleted as of the date of termination, shall be left in a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of the streets and sidewalks of the City prior to the beginning of construction.
- c. The City agrees that should GDOT terminate the TE MOU prior to the completion of the work, that ASO shall receive the reimbursement to which the City would be entitled under the terms of the TE MOU, provided that such funds are not required to restore the street and sidewalks of the City to a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic.

3.

TIME OF PERFORMANCE

ASO shall commence the performance of its obligations pursuant to the terms of the TE MOU no later than thirty (30) calendar days after execution of this Agreement by each of the parties. The work to be performed by ASO shall be completed as follows: All design activities necessary to produce a complete set of biddable construction plans meeting appropriate safety, access, and design standards; and preparing and forwarding construction bid procedures and documents for the Georgia Department of Transportation's review no later than June 30, 2010. Provided however that ASO may request that the City seek an extension of the time for completion of the TE MOU and that if the extension of the operation TE MOU is granted, such extension shall apply to this Agreement. The City agrees to request an extension of the TE MOU from GDOT within five business days after receipt of a written request for extension from ASO. In addition, ASO may request that the scope of any Project-Phase be allocated or divided or that the order of letting the Project of the Project-Phases be adjusted and the City agrees to seek Department approval of such request, and if granted the request shall apply to



Agreement. The City agrees to submit said requests within five business days after receipt of a written request from ASO.

4.

PROFESSIONAL RESPONSIBILITY

ASO shall assume all responsibility undertaken by the City in the TE MOU with respect to the professional quality, technical accuracy and the coordination of all designs, drawings, and specifications and other services furnished by or on behalf or required of the City pursuant to the TE MOU.

- a. ASO shall correct or revise or cause to be corrected and revised any errors and deficiencies in the designs, drawings, specifications, construction and/or other services as required in the TE MOU and furnished for the Project by ASO on behalf of the City under this Agreement, for which the City has received notice from GDOT, within such time that the City shall not be in breach of its obligations to GDOT under the TE MOU. The City shall give such written notice to ASO no later than the third business day after receipt of notice from GDOT. ASO is aware that the City is obligated to address any errors or deficiencies in the work as specified in the TE MOU and/or assume all responsibility caused by such errors and deficiencies and agrees that the time period specified herein is reasonable for ASO to be required to make such revisions and corrections. All plans shall be prepared in English units.
- b. ASO shall be responsible for any claim, damage, loss or expense to the City that is attributable to negligent acts errors or omissions related to the designs, drawings, specifications, construction and/or other services required to be furnished by or on behalf of the City pursuant to the TE MOU, in the event that such claim, damage, loss or expense arises from obligations which ASO has specifically undertaken in this Agreement.
- c. Prior to the later of: (I) GDOT's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by GDOT or FHWA or designee, ASO agrees that authorized representatives of GDOT and the Federal Highway Administration ("FHWA") and the City may at all reasonable times review and inspect the activities and data collected under the terms of this Agreement and any amendments hereto, including but not limited to all reports, drawings, studies, specifications, estimates, maps, and computations, prepared by or for the City, ASO or any other Person.
- d. ASO agrees to incorporate into its work activities any reasonable review recommendation of GDOT or the City, provided that the City's review recommendations are made prior to GDOT's final approval of the design documents. The City shall be given written notice of each submission to



GDOT and provided with sufficient information to determine if the plans to be submitted to GDOT have been reviewed by the City prior to submission to GDOT for final approval.

- e. ASO agrees that all agreements with any Person(s) shall cause all such Person(s) to be bound to the same terms and conditions and standards of performance as this Agreement. No action, omission, error or failure to act on the part of any Person(s) shall excuse the obligations of ASO under this Agreement. No contract or sub-contract under this Agreement shall be assigned.
- f. All the services required hereunder will be performed under the direct supervision of ASO. All Persons engaged in any work by ASO to work on the Project shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.
- g. ASO agrees that the specifications required by GDOT in transportation infrastructure improvements are generally known and that the vast majority of the specifications to be applied to the Project may be ascertained through the exercise of due diligence such that it is possible to agree to perform the Scope of Work under the terms of the TE MOU even if such terms are not specifically set forth herein or in the Scope of Work.
- h. The City will make available in a timely manner all records and documents required by ASO to fulfill the Scope of Work.
- i. Any data transferred to the ASO by the City remains the proprietary product of the City. The City shall retain title and ownership of all data including any digital data. In no event will the City be liable for any damages whatsoever, including but not limited to, direct or indirect damages, any loss of profits, any costs or expenses incurred, any lost savings, or other incidental or consequential damages, arising out of the use or arising out of the inability to use any data transferred by the City. ASO may not redistribute, rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any data provided by the City, or any portion thereof, without the express written permission of the City.
- j. ASO waives for itself, its successors, and its assigns and any Person employed by it in any capacity, all rights to any claim to damages whatsoever arising out of the use of the City's data for the Project, and/or the provision of this data to ASO and/or the transfer of this data to ASO shall be included in any and all contracts or agreements related to the Project and that any Person employed on the Project shall agree to the same.
- k. ASO agrees that all reports, plans, drawings, studies, specifications, estimates, maps, computations, computer diskettes and printouts, and any



other data prepared under the terms of this Agreement or developed in connection with the Project ("Project Data") shall become the property of the City. One copy of all Project Data shall be organized, indexed, bound, and delivered to the City no later than the advertisement of the Project for letting. The City shall have the right to use Project Data without restriction or limitation unless otherwise provided herein. Subject only to the terms of this Agreement which specify otherwise, ASO warrants that it owns all Project Data and has the right to grant unlimited use of all Project Data to the City. ASO waives all claims for compensation connected with any future use of the Project Data. The City agrees that Project Data is intended to be specific to this Project ("Project Data").

5.

FUNDING OF THE PROJECT

ASO and the City hereby acknowledge and agree that this Agreement contains a Budget Estimate which specifies that the total estimated costs for the Project are as depicted on Exhibit A. ASO and the City further acknowledge and agree that the TE MOU states that funds of GDOT, funds apportioned to GDOT by the Federal Highway Administration, capital funding as referenced in the Intergovernmental Agreement Relating to Land Transportation Projects or a combination of funds from said sources or regional funds shall be subject to the terms of the TE MOU.

- a. ASO acknowledges and agrees that the Project budget includes any and all claims by it against the City under this Agreement and/or in the conduct of the entire scope of work for the Project, including any and all work performed pursuant to the TE MOU.
- b. ASO agrees that it will make available all funds necessary and required to complete the Project in excess of that made available by the total federal contribution and agrees that the City is not required or expected to provide any funds for any part of the cost of the Project. The City agrees to cooperate with all reasonable applications for budget adjustments which ASO may request that the City forward to GDOT.
- c. ASO acknowledges and agrees that Resolution 08-R-____ does not authorize the City to commit funds to this Project. However, the City and ASO acknowledge that the City may, at its sole discretion, contribute Quality of Life Matching Funds to the Project. All costs of the Project in excess of available federal funds, capital funding, regional funds and funds which may be contributed through Quality of Life Matching Funds are solely the responsibility of ASO.
- d. In the event of termination of the Project by GDOT, the obligations of ASO are governed by Paragraph 2, subpart b of this Agreement.



6.

CITY'S RIGHT OF APPROVAL OF PLANS & WORK

The City shall have the right to approve any part of the plans for the Project. ASO acknowledges and agrees that the Project must meet any requirements of the City in addition to any requirements of GDOT and FHWA. ASO shall submit all plans for any work on the Project to the Commissioner of Public Works for the City's comments, which shall be provided in writing within ten (10) business days, unless extended by the City for reasonable grounds and with prior written notification. ASO may at the time of submission of plans to the Commissioner of Public Works, submit a copy to GDOT. Within two (2) business days of receipt, ASO shall forward the City's comments with ASO's submittals to GDOT. ASO shall review any previously approved plans with the City for confirmation of the City's approval.

7.

PROCUREMENT OF CONTRACTS

In the performance of this Agreement, ASO, acting as the City's agent, is authorized to contract with others for necessary services, provided that such contracts are procured in accordance with this Agreement, the TE MOU, and all applicable federal and state laws and City Ordinances. The lack of a specific requirement in this Agreement, relating to procurement of contracts, does not relieve ASO from its obligation to follow all requirements relating to procurement of contracts which are set forth in the TE MOU or incorporated by reference in the TE MOU. However, said procurement requirements shall not be applicable to any technical consultant, construction program manager or professional engaged by ASO prior to the execution of this Agreement for program management or right of way acquisition services. In addition said procurement requirements shall not be applicable to ASO regarding construction agreements entered by GDOT relative to the performance of the TE MOU.

- a. Any construction contract paid from funds related to the Project in excess of \$20,000 shall be let by public bid, regardless of whether such contract is funded by the matching funds provided by ASO or by federal funds.
- b. ASO acknowledges and agrees that it will follow the State of Georgia's competitive bid procedure and will document all activities related to the process. All contracts let by public bid will be awarded to the lowest responsive bidder, unless it can be shown that the lowest bidder did not meet the advertised criteria for contractor selection.



- c. ASO acknowledges and agrees that the construction bid documents must comply with federal requirements and, ten (10) business days prior to the advertisement for bids, will provide completed construction plans, bid documents, and specifications to GDOT's Project Manager for approval. Bid packages shall be prepared by ASO in consultation with the City's Chief Procurement Officer (who shall undertake its best efforts to approve the bid package within five (5) business days of the approval by GDOT), and approval of the construction plans by all necessary departments of the City. After approval by GDOT's Project Manager and the City's Chief Procurement Officer, bid packages shall be made available for purchase by interested bidders at the location customarily employed by the City of Atlanta Department of Procurement for such purposes.
- d. ASO acknowledges and agrees that bids must be advertised at least four weeks prior to bid opening and published again two weeks prior to bid opening and once again published one week prior to bid opening. Such advertisements will state that the project is being advertised as a project of the City of Atlanta and the text of the advertisements are subject to the approval of the City's Chief Procurement Officer. ASO will provide the proposed form of an advertisement at least ten (10) business days in advance of the time that such advertisement must be placed for publication. If the City's Chief Procurement Officer is unable to approve the text of advertisements submitted by ASO, the City shall provide language for the advertisement within ten (10) business days of submission to the Chief Procurement Officer unless extended by the City for reasonable grounds and with prior written notification. In no event shall an advertisement be placed which does not have City approved language.
- e. If applicable, all contracts related to the Project will specify that wage rates established by the Davis-Bacon Act.
- f. Bid openings will occur at the offices of the City's Department of Procurement, located at Suite 1750, 55 Trinity Avenue, Atlanta Georgia 30335. After the opening of bids in a meeting open to the public, the names of contractors submitting bids and the amount of all bids will be read aloud.
- g. Bid bonds equal to five percent (5%) of the submitted bid must be included with all bids. The bid bond shall be in the form of a bond from a surety acceptable to the City's Risk Manager, a certified check, or other negotiable instrument and shall serve as assurance that the Person bidding for the contractor will, upon acceptance of their bid, execute such contractual documents as may be required within a specified period of time.



- h. ASO acknowledges and agrees that negotiations with bidders is prohibited. If all bids are in excess of any cost estimate set forth in Exhibit B, ASO acknowledges and agrees that it may not negotiate with the lowest bidder to bring the costs within the estimate. In such a case, ASO acknowledges and agrees that it will either revise the plans and estimate, re-advertise and re-bid for the contract or accept the lowest responsive bid and accept responsibility for the cost difference.
- i. ASO and the City acknowledge and agree that GDOT requires a bidder to be pre-qualified before submitting a bid in excess of five hundred thousand dollars (\$500,000) and that if the bid involves major structures such as bridges and retaining walls, the contractor must be pre-qualified regardless of bid amount. If a single sub-contract is in excess of two hundred and fifty thousand dollars (\$250,000), the sub-contractor must be registered with GDOT. It shall be the responsibility of ASO to deal directly with GDOT to resolve all questions involving the pre-qualification of bidders, the determination of whether a bid involves major structures, or the registration of bidders.
- j. ASO acknowledges and agrees that no advertisements will be placed until such time as GDOT has issued a notice to bid to the City authorizing the bidding of the Project.
- k. ASO and the Department of Procurement ("DOP") will evaluate the bids. ASO shall be responsible for having the bids reviewed by DOP, including without limitation, those parts of the bids with respect to DBE compliance. After approval by DOP of the decision to award, or DOP's decision to decline to review the decision to award, ASO shall send the letter notifying the lowest responsive bidder that the contract has been awarded. ASO shall be responsible for assuring execution of the contract and issuance of the notice to proceed.
- l. ASO acknowledges and agrees that all documents connected with the public bidding process and the contract will be subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq* and the City shall maintain one original and one copy of all bids.

8.

**EQUAL BUSINESS OPPORTUNITY (EBO)
DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

ASO acknowledges and understands it is the policy of the City of Atlanta to actively promote full and equal business opportunities for local minority and female business enterprises through its Equal Business Opportunity Program as outlined in the City of Atlanta Code of Ordinances, part 2, Division 12. ASO acknowledges the availability of minority and female owned firms in the Atlanta area is 17% Minority Business



Enterprise ("MBE") -- African-American Business Enterprise ("AABE") and Hispanic Business Enterprise ("HBE") -- and 17% Female Business Enterprise ("FBE") as outlined in the previously referenced provisions of the City Code. ASO further acknowledges that it will use its best efforts to utilize minority and female business enterprises consistent with their availability in the Atlanta area. ASO agrees to provide all pertinent information regarding participation by MBE's and FBE's within 30 days after a request by the Office of Contract Compliance.

ASO acknowledges and agrees that GDOT has set an annual aggregate 12% Disadvantaged Business Enterprise goal for all federal aid highway projects. ASO acknowledges and agrees that it will follow all applicable DBE requirements set by the Department and will be responsible for the submission of all reports required by the Department.

The level of minority and female enterprise participation required by GDOT through its annual aggregate 12% Disadvantaged Business Enterprise goal for federal aid highway projects shall be credited fully for the purposes of the City of Atlanta's Equal Business Opportunity Program under the uniform certification process stated by the Department to be in effect for the purposes of the TE MOU.

9.

INSURANCE AND BONDING

In the performance of this Agreement, it is anticipated by the parties that ASO will enter into construction contracts in the performance of this Agreement. Accordingly, the following insurance and bonding provisions shall be applicable:

a. Insurance.

(1) During the entire term of this Agreement, ASO agrees to cause all Persons to maintain insurance required by this Agreement, and where applicable to obtain such insurance on its own behalf.

(2) ASO acknowledges and agrees that the minimum levels of insurance applicable to the Project are as follows: A. Workmen's Compensation Insurance in accordance with the laws of the State of Georgia; B. Public Liability Insurance in an amount of not less than \$100,000 for injuries, including those resulting in death to any one person and in an amount of not less than \$300,000 on account of any one occurrence and C. Property Damage Insurance in an amount of not less than \$50,000 from damages on account of any occurrence, with an aggregate limit of \$100,000 and that this minimum level of coverage shall be specified in any contract to be paid from funds allocated by this Agreement, provided however that the public liability insurance for injuries, including those resulting in death to any one person, shall be increased to \$500,000 per occurrence. Said insurance shall be maintained



in full force and effect during the term of the Agreement and until final completion of the Project.

(3) The City shall be named as an additional insured in each policy related to the Project.

(4) The cancellation of any policy of insurance required by this Contract shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Official Code of Georgia Annotated.

(5) At the time of the execution of any contract to be paid from funds allocated by this Agreement, ASO agrees to cause each Person to furnish to the City a Certificate of Insurance showing required coverage.

(6) ASO agrees to indemnify the City from any losses arising from its failure to obtain and keep in force any policy of insurance or the failure of any Person to obtain and keep in force any policy of insurance.

b. Bonding-Construction contracts.

(1) At the time of the execution of any construction contract to be paid from funds allocated by this Agreement, ASO agrees to cause each Person to furnish the City with a performance bond equal to 100% of the contract price and a payment bond equal to 110% of the contract price.

(2) Each payment and performance bond obtained by any party providing construction materials or construction services under this Agreement shall name the City of Atlanta as a co-obligee.

(3) All performance bonds and payment bonds required under the this Agreement shall be in a form acceptable to the City and shall be approved by the City's Risk Manager prior to the execution of any construction contract with any Person.

(4) The Person executing the performance bonds and payment bonds on behalf of the surety will file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of the surety.

(5) ASO agrees to indemnify the City from any losses arising from the failure of any construction contractor to obtain and keep in force any payment or performance bond.

(6) ASO agrees to specifically provide in all construction contracts or agreements that the specific obligations set forth in this paragraph shall be binding on all Persons.



10.

CITY'S RIGHT OF INSPECTION

Prior to the later of: (i) GDOT's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by GDOT or FHWA or designee, the City, GDOT and FHWA shall have the right to inspect any part of the work which is the subject of this Agreement, at any time. Within this specified time period, inspectors or designees from the City, GDOT and FHWA are given the right of entry to all work sites at any time and all office sites during business hours and upon reasonable notice to conduct inspections of the Project and the associated records as deemed necessary. ASO shall provide in all contracts or agreements relating to the Project that the right of entry and inspection given by ASO in this Agreement shall be binding on all sub-contractors of whatever tier, regardless of whether such sub-contractor has a contract with ASO. Within this specified time period, this right of entry and inspection shall include the right to inspect and audit all books and records of ASO or of any sub-contractors, which reasonably relate to this Agreement.

11.

PAYMENT OF INVOICES

- a. ASO agrees and understands that the TE MOU states that GDOT will only disburse funds to the City and that the terms of Resolution _____ which authorized this Agreement do not allow the City to disburse any of its own funds for any of the work on the Project.
- b. The City shall submit to GDOT a monthly report (based on calendar months) which describes the progress which was accomplished in the previous month, anticipated work to be done during the next month and any problems encountered or anticipated (the "Monthly Report").
 - (1) The preparation and presentation to the City of a proposed form of the Monthly Report, which the City shall submit to GDOT, is the sole responsibility of ASO. The proposed form of the Monthly Report shall be transmitted to the City no later than the 30th of every month or the next business day thereafter in the event that the 30th falls on Saturday, Sunday or a legal holiday.
 - (2) The City shall, within three business days of receipt of a submission of a proposed Monthly Report, submit the same to GDOT, but the City, without the approval of ASO, shall have the right to add comments or other material. ASO agrees that only the City may submit the



Monthly Report to GDOT. At the same time the Monthly Report is submitted to GDOT, the City shall provide a copy to ASO.

ASO agrees and understands that GDOT will only pay to the City in proportion to the percentage of work completed for each phase of the work and will only make such payments after the receipt and review of a voucher certified by the City

(1) The City agrees to receive proposed vouchers prepared by ASO and when the City is satisfied that the work is within the terms and conditions of the TE MOU certify the voucher and transmit it to GDOT, provided that the City shall not submit more than one voucher to GDOT for any calendar month. At the same time a voucher is submitted to GDOT, the City shall provide a copy to ASO.

(2) The City agrees to undertake its best efforts to verify whether it can certify the voucher proposed by ASO within five (5) business days of the receipt of a proposed voucher. The City agrees to notify ASO of any part of the proposed voucher that will not be certified and to undertake discussions as to what steps ASO must undertake so that the City can agree to certify the part of the proposed voucher which is not submitted.

(3) After its five (5) day review period, the City agrees to submit to GDOT, on the next business day, all parts of the voucher which it is willing to certify. ASO agrees that only the City may submit vouchers to GDOT.

(4) The preparation and presentation to the City of the documents which will comprise a voucher is the sole responsibility of ASO.

(5) Upon the receipt of payment from GDOT for the work submitted in a certified voucher, the City agrees to remit such funds to ASO as soon as the transfer of the funds can be arranged.

d. ASO acknowledges and agrees that GDOT will only make a final payment to the City if the City agrees that the acceptance of the final payment is in full and final settlement of all claims arising against GDOT for work done, materials furnished, costs incurred or other matters arising from the TE MOU. ASO further acknowledges and agrees that the TE MOU states that the acceptance of the final payment by the City shall release GDOT from any and all further claims of whatever nature, whether known or unknown, for and account of the TE MOU and for any and all work done, and labor and materials furnished, in connection with the TE MOU. ASO acknowledges and agrees that the City will only request the final payment from GDOT on the condition that ASO shall release the City from any and all further claims of whatever nature, whether known or unknown, for and on account of, this Agreement and/or the TE MOU and for any and all



work done, and labor and materials furnished, in connection with this Agreement and/or the TE MOU.

- e. ASO acknowledges and agrees that GDOT will only make a final payment to the City if the City will allow the examination and verification of the costs of the Project by GDOT's representative's review of books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project as maintained by ASO. Such records shall be made available to GDOT and any reviewing agency designated by GDOT during the Project and for a period of three years from the date of final payment. If GDOT's examination of the cost records result in unallowable expenses, ASO understands and agrees that they shall be responsible for reimbursing the City for the full amount of such disallowed expenses immediately upon the City's reimbursement of GDOT, if the amount of such unallowable expenses has not already been paid to the City in anticipation of the City's payment to GDOT.

12.

INDEMNIFICATION

ASO acknowledges that the TE MOU between GDOT and the City which provides for the construction of those improvements described in the TE MOU obligates the City to GDOT in several respects and ASO agrees to the maximum extent allowed by law to assume all of the obligations and responsibilities of the City under the TE MOU except where the City specifically assumes an obligation or responsibility under this Agreement. ASO further agrees to indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to those obligations or responsibilities which ASO has agreed to assume including any subsequent obligations or responsibilities which may be imposed on the City by GDOT under the TE MOU. The language of this general assumption of obligation and responsibility and general indemnity shall not be construed to waive or supersede any previous language of this Agreement which more specifically describes any other assumption of responsibility or obligation or indemnification, but shall be construed to supplement those specific assumptions of responsibilities and obligations or indemnifications. The language of this general assumption of responsibility or obligation and general indemnity shall be construed in the broadest sense to include all parts of the TE MOU under which ASO has assumed any responsibility or obligation and includes as a part of the indemnity, an Agreement by ASO to reimburse the City for the payment of all claims, expenses, costs arising from or in respect to the TE MOU, regardless whether such claims, expenses or costs arise from or in respect to, the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by or on behalf of the City pursuant to the TE MOU, construction delays, personal injury, injuries to property or any other type of claim expense or cost.

- a. ASO acknowledges and agrees that this general indemnity includes the possibility that federal funds may be disapproved for reasons not relating



to actual construction of the Project, including without limitation, the procurement process, the requirements related to record keeping, and the final audit of the Project

- b. ASO acknowledges and agrees that this general indemnity provided by this Agreement shall survive its termination.

13.

NOTICES TO THE PARTIES

The City appoints as its designated representative for the receipt of notices, submittals, or other communications, Joe Basista, the Commissioner of the Department of Public Works, or any successor, whose address for the purpose of this Agreement shall be:

Joe Basista

Commissioner of Department of Public Works
Atlanta City Hall
55 Trinity Avenue, S.W, Suite 4700,
Atlanta, GA, 30335
404-330-6240

ASO appoints as its designated representative for the receipt of notices, submittals, or other communications, Mary Susan Wheeler whose address for the purpose of this Agreement shall be:

Ms. Mary Susan Wheeler
Director of Legislative Affairs
Atlanta Symphony Orchestra, Inc.
1230 Peachtree Street, NE
Suite 1100
Atlanta, Georgia 30309-3352
404-733-5197

All notices, submittals or other communications shall be made to the designated representative in writing and delivered by: (a) hand delivery at the address indicated herein; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) by Facsimile immediately followed by a confirmation call. The day upon which such notice is hand delivered or faxed and confirmed shall be deemed the date of service of such notice if delivered by such means. The date of signature on the Return Receipt or the date of refusal shall be deemed the date of service of such notice if delivered by United States Certified Mail. Either party may change its designated representative by notice to the other as provided herein or may name other persons as sub-designees for



receipt of specific types of materials, such as engineering plans, blueprints or other luminous documents, provided however that the designated representative shall receive a simultaneous notice describing the type material which is sent to any designee

14.

COMPLIANCE WITH CITY ORDINANCES

It is specifically agreed that none of the terms of this Agreement excuse, modify or waive compliance with any City ordinance.

15.

PERMITS AND LICENSES

ASO shall obtain, at its own expense, all application for permits not previously provided by the City and licenses required by all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the performance of the services called for by this Agreement.

16.

GENERAL PROVISIONS OF THIS AGREEMENT

- a. The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.
- b. No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.
- c. This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.
- d. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court



interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

- e. The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.
- f. Any agreement between ASO and any other Person shall specify that the City shall have the right to enforce the terms of the agreement without the consent of ASO and that the obligations of any Person under any agreement with ASO shall survive the termination of the existence of this Agreement and/or the termination of the existence of ASO.

17.

ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements and constitutes the full, complete and entire agreement between the parties with respect to the terms of the Agreement; no member, officer, employee, representative or agent of either party has authority to make, or has made, any statement, agreement, representation to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both parties and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed the seals.

[SIGNATURES APPEAR ON FOLLOWING PAGE]



ATLANTA SYMPHONY ORCHETRA, INC.

By: _____
Printed Name
Title

Attest: _____
Printed Name
Title

CITY OF ATLANTA

Municipal Clerk (Seal)

By: _____
Shirley Franklin, Mayor

RECOMMENDED

Commissioner, Department of
Public Works

APPROVED AS TO SUBSTANCE

Chief Financial Officer

Chief Procurement Officer

APPROVED AS TO FORM

City Attorney

RCS# 1955
5/19/08
3:36 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

EXCEPT 06-O-1908,

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

Y Smith
Y Hall
Y Young
Y Winslow

Y Archibong
Y Fauver
Y Shook
Y Muller

Y Moore
NV Martin
Y Maddox
Y Sheperd

Y Mitchell
Y Norwood
NV Willis
NV Borders

CONSENT I

08-R-0987

(Do Not Write Above This Line)

A RESOLUTION BY
TRANSPORTATION COMMITTEE

A RESOLUTION AUTHORIZING THE
MAYOR, ON BEHALF OF THE CITY
OF ATLANTA ("CITY"), TO ENTER
INTO A MEMORANDUM OF
UNDERSTANDING ("MOU"), WITH
THE ATLANTA SYMPHONY
ORCHESTRA, INC. ("ASO"), TO
SERVE AS THE SPONSOR FOR THE
TRANSPORTATION
ENHANCEMENT PROJECT, P.L. NO.
0008134; AND FOR OTHER
PURPOSES.

ADOPTED BY
AS AMENDED MAY 19 2008
COUNCIL

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER
- Date Referred
- Referred To:
- Date Referred
- Referred To:
- Date Referred
- Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred to _____

Committee

TRANSPORTATION

Date 5-14-08

Chairman

Action:

Fav Adv, Hold (see rev. side)

Other:

Amended

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

FINAL COUNCIL ACTION

- ☐ 2nd ☐ 1st & 2nd ☐ 3rd
- Readings
- ☐ Consent ☐ V Vote ☒ RC Vote

CERTIFIED

MAY 19 2008

CERTIFIED
MAY 19 2008
Randy Davenport, Clerk
MUNICIPAL CLERK

APPROVED
MAY 20 2008
Mayor